

Chapter 2

2.0 EXECUTIVE SUMMARY

2.1 MAJOR CONCLUSIONS AND FINDINGS

2.1.1 Background

This Final Environmental Impact Statement (FEIS) is being prepared to assist the New York District of the United States Army Corps of Engineers (USACE) in its review of Permit Application No. 95-07440-RS, submitted by Empire, Ltd. (the applicant) on July 20, 1995 and modified on September 23, 1997. The applicant seeks a permit pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act (CWA) to discharge fill material and perform construction activities in waters of the United States. The proposed federal action under consideration in this FEIS is the decision of USACE whether to issue or deny or issue a permit for the project proposed by the applicant, and whether to attach conditions to a permit if issued. Such action requires preparation of an Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA) to evaluate the impacts of, and alternatives to, the proposed action.

The current Federal Permit application submitted to USACE seeks authorization to place fill material in 206 acres of waters of the United States, including wetlands. A total of 204 acres of these wetlands are located on a 592-acre site known as the "Empire Tract" in the Boroughs of Carlstadt and Moonachie and Township of South Hackensack, Bergen County, New Jersey, located in the Hackensack Meadowlands. The objective of the fill is to facilitate construction of a mixed-use commercial development that consists of a super-regional retail/entertainment center, hotel, and office space, with warehouse and mass-transit facilities and related infrastructure. The applicant subsequently reduced the size of the project site by 5 acres, from 592 to 587 acres, by removing from the project, portions of the Empire Tract located in the Borough of Moonachie.

The 206 acres of fill includes 2 acres of fill that would be discharged within an adjacent New Jersey Turnpike Authority (NJTA) right-of-way for improvements to NJTA Interchange 18 W. (See Section 4.2 for a full description of the proposed project). The applicant proposed to mitigate 335 acres of wetlands and preserve 45 acres of wetlands for the original 206-acre project proposed. The development described in the USACE permit application is identified in this FEIS as the "Meadowlands Mills" Alternative. This application supersedes a previous permit application No. 92-15800 submitted by Empire Ltd. on July 2, 1992, to discharge fill material into 311 acres of wetlands, in order to construct a project known as Meadowlands Town Center (see Chapter 5).

While the subject of the permit application remains a 206-acre project, the analysis presented in

Chapter 7 of this FEIS addresses two 134-acre development alternatives (Empire Tract Alternatives D and E) with fewer wetland fill impacts that still meet the applicant's stated project purpose. A third alternative, Revised Empire Tract Alternative E, was developed in response to agency comments and incorporates a revised mitigation plan into the Empire Tract Alternative E proposal. The 134-acre development alternatives are evaluated in this FEIS because USACE determined that other alternatives discussed previously in the July 2000 DEIS, would impact more acreage than required by the project purpose, and therefore would be environmentally unacceptable.

2.1.1.1 Purpose and Need

The applicant proposes to develop the Empire Tract in cooperation with The Mills Corporation, a nationally recognized Real Estate Investment Trust. The purpose of the project is to develop in northeastern New Jersey an economically viable mixed-use commercial development that consists of a super-regional retail/entertainment center, hotel, and office space, with warehouse/distribution and mass transit facilities to support the commercial development. Under Empire Tract Alternatives D and E, the project is made up of five integrated components that include 2,557,802 square feet (SF) of retail/entertainment space, 1,500,000 SF of office space, 521 hotel rooms with conference center (approximately 700,000 SF), 50,000 SF of warehouse space, and 10,000 SF of mass-transit facilities.

Market demand studies were conducted by the applicant for each of the component activities of the proposed project. Based on these studies, the Empire Tract fulfills all of the economic feasibility and logistical criteria (Section 5.5.1.3) that would allow the project purpose and the applicant's economic expectations to be met, and is the applicant's preferred site (Chapter 4).

If authorized to discharge fill into wetlands, as requested in the application, the applicant proposes compensatory mitigation for the unavoidable adverse impacts associated with the loss of wetlands that would result from project construction (See Chapter 8). The stated goal of the wetland mitigation plan is to increase the functions and values of the wetlands remaining on the site after project development by several measures, in order to achieve no net loss of wetland functions and values. These mitigation measures are largely based upon restoring tidal brackish flows from the Hackensack River. The mitigation plan proposes measures aimed at improving water quality, wildlife habitat and flood-flow alteration functions on the remaining wetlands, in order to offset the loss of these functions from placement of fill on 134 acres. If USACE issued a permit, a wetlands mitigation plan would be finalized in conjunction with the reviewing agencies and in consideration of public comments.

2.1.2 Alternatives

In order to comply with regulatory requirements in terms of avoidance, minimization and mitigation of impacts, USACE conducted a comprehensive evaluation of alternatives to the applicant's proposed project (Chapter 5). The focus of this evaluation has been to identify and evaluate opportunities to reduce adverse impacts to wetlands by developing the project at an off-site location or by reducing the development footprint on-site, thereby reducing the wetland fill acreage. Within the alternatives analysis, the suitability of each potential alternative for achievement of the project purpose has been evaluated. The environmental impacts associated with each alternative have also been considered, along with the potential for avoidance, minimization and mitigation of adverse impacts.

The analysis of alternatives to the proposed project considers an analysis of the No-Action (no permit) alternative, an analysis of potential off-site alternatives to the development of the Empire Tract, and an analysis of on-site alternatives to the proposed project. The off-site alternatives analysis was based on a detailed inventory of potential off-site alternatives, including brownfield sites identified by government agencies, to the proposed project that could fulfill the project purpose, (See Chapter 4). In this analysis, a six-county study area in northeastern New Jersey was used (see Section 5.4). The identification and evaluation of off-site alternatives focused on this study area. The applicant, at USACE's request, compiled an inventory of 103 sites. With the possible exception of a site in Bayonne, the alternatives analysis for this FEIS did not conclusively identify any potential alternative sites that could provide a practicable alternative for construction of the proposed project, and still meet the project purpose. While New Jersey State officials have recently indicated that the site of the Continental Airlines Arena site could become available, USACE considers this location not to be a practicable alternative at this time. This is because it is uncertain when or if the site would become available, and insufficient evidence indicating the site could accommodate the project purpose which is the subject of the permit application. Further consideration of these two sites will be made in the process of reaching a Record of Decision on the DA permit application.

The alternative sites that were evaluated were limited by physical, regulatory, logistical, or economic constraints to such an extent that sites were found to be unsuitable to fulfill the project purpose. Several sites were identified which appear, based on current information, to be impracticable because of issues of contamination and the costs, time and uncertainties associated with remediation.

The on-site alternatives analysis consisted of evaluation of various project configurations, footprints and construction methods, focusing on reducing potential wetland impacts by using different techniques for fill and foundation construction, storm water management and roadway alignment. The alternatives analysis has identified and evaluated the No-Action Alternative as a potential alternative to the proposed project. Under the No-Action Alternative, a permit would

not be issued and the environmental conditions on the Empire Tract would be expected to remain the same as, or similar to, existing conditions.

In 1988, federal and state agencies, including USACE, looked to formulate a Special Area Management Plan (SAMP) for the Hackensack Meadowlands District. The SAMP proposal sought to make Section 404 regulatory policy consistent with a proposed update to the Master Plan of the New Jersey Meadowlands Commission (NJMC, formerly known as the Hackensack Meadowlands Development Commission, or HMDC) authorizing and in some cases limiting development in the Meadowlands. A draft EIS for the SAMP, that examined and evaluated impacts of alternative plans for filling and development in the Meadowlands, was issued in June 1995.

Agency discussion of the SAMP gave rise to the establishment of the Meadowlands Interagency Mitigation Advisory Committee (MIMAC). The United States Fish and Wildlife Service also completed a Wildlife Management Plan in 2000 that agencies had intended to be included in the SAMP. Beyond these initiatives and associated discussions, the SAMP did not progress and the NJMC withdrew as local sponsor of the SAMP in January of 2002.

USEPA Guidelines under Section 404 (b)(1) of the Clean Water Act state that no DA permit may be granted if there is a practicable alternative to the proposed action that would have less adverse impact on the aquatic environment, provided that the alternative does not have other significant adverse environmental consequences (40 CFR Part 230.10). Empire Tract Alternatives D and E, and the Revised Empire Tract Alternative E, represent the greatest reduction in project footprint, and therefore wetland fill, of all the proposed alternatives, with the exception of the No-Action Alternative. These alternative proposals are the result of an extensive environmental review process, during which several proposed alternatives were developed, evaluated and refined to minimize wetland fill and other environmental impacts. Meadowlands Mills Town Center, Meadowlands Mills Alternative (206-acre proposal), and Empire Tract Alternatives A, B and C were all eliminated or modified during this process, in an effort to avoid and/or minimize environmental impacts and wetland fill while still achieving the project purpose (See Section 5).

Since Empire Tract Alternatives D and E, and a Revised Empire Tract Alternative E would incur lesser environmental impacts than any of the other development alternatives, these alternatives were carried forward for further analysis in Chapter 7 of this FEIS. A detailed description of the wetland mitigation plans proposed for the Empire Tract Alternatives D and E is provided in Chapter 8.

The environmental consequences of the 206-acre fill project known as the Meadowlands Mills Alternative, which remains the subject of the permit application, were discussed in detail in the DEIS. In commenting upon the DEIS, USEPA Region 2 indicated that the Meadowlands Mills Alternative would be found to be environmentally unacceptable, since less damaging practicable

alternatives were available. USEPA also stated that if USACE were to issue a permit for fill of wetlands as described in that alternative, then USEPA might prohibit the specification of the Empire Tract as a disposal site, as authorized by Section 404(c) of the Clean Water Act.

USACE no longer considers the 206-acre Meadowlands Mills Alternative to be a viable alternative, and this alternative is not evaluated further in this FEIS. USACE concludes that the 206-acre fill continues to be the applicant's preferred alternative. Empire Tract Alternative E is the subject of current applications by Empire, Ltd., to the New Jersey Department of Environmental Protection (NJDEP) and the New Jersey Meadowlands Commission (NJMC). USACE's preferred alternative has not been determined and is not identified in this FEIS. The agency preferred alternative will be set forth in a Record of Decision (ROD) to be prepared at the time a decision on the permit application is made.

2.1.3 Affected Environment

Chapter 6 describes the existing conditions of the environment that would be affected by the project requested by the applicant, and forms the basis for the evaluation of the potential environmental consequences associated with the proposed project. The assessment of the current conditions existing at the Empire Tract and surrounding communities documents environmental, cultural, socioeconomic, land use, and infrastructure conditions at and near the site. Chapter 6 includes subchapters on wetlands, water quality, fish and shellfish, wildlife, benthos, hazardous waste, endangered and threatened species, critical habitat, aesthetics, topography, flooding, transportation, traffic, air quality, human health, socioeconomics, navigation, land use, noise, and infrastructure.

The Empire Tract encompasses 587 acres of undeveloped, privately owned land located within Bergen County, New Jersey. The tract is 5 miles from Manhattan and lies immediately northeast of the Meadowlands Sports Complex and adjacent to the New Jersey Turnpike. The site is bordered to the north, west and south by industrial and commercial development.

The Empire Tract falls within the northern one-third of the Hackensack Meadowlands District (HMD), a 32-square-mile area that includes 8,500 acres of aquatic habitat including freshwater and estuarine wetlands remaining after prior development. Located east of the site is the lower portion of the Hackensack River and associated wetlands. The entire site falls within the 100-year floodplain of the Hackensack River. Historically, filling, draining or diking disturbed large portions of the Hackensack Meadowlands. In the 1920s, many areas, including the Empire Tract, were drained and diked in an effort to control flooding and mosquito breeding, altering the natural flow of freshwater and tidally influenced wetlands. As a consequence, the Empire Tract is now made up of wetlands that are not subject to regular tidal inundation due to existing dikes and tide gates. The plant life on these wetlands is presently dominated by common reed (*Phragmites australis*).

The current functions and values of the Empire Tract wetlands were calculated using the Indicator Value Assessment (IVA) method, which evaluates three major categories of wetland functions: water quality improvement, wildlife habitat, and social significance. Results of the assessment indicated that wetlands on the Empire Tract have a comparable value for water quality and wildlife habitat relative to other wetlands in the HMD. The IVA was supplemented by additional site-specific studies and evaluations of wildlife, and of hydrology including water quality and flood storage potential.

Regarding the water quality improvement function, the majority of the Empire Tract wetlands are not regularly inundated by tidal flow due to existing dikes and tide gates. Thus, the natural ability of the on-site wetlands to improve water quality in the Hackensack River is lower relative to wetlands that are regularly inundated by tides.

Because of the hydrologic impairments caused by the dikes and tide gates and their influence on habitat, the habitat quality on the Empire Tract for some wildlife species of management concern (e.g., waterfowl, wading birds, and shorebirds) is considered less than that of similar wetlands with undisturbed hydrology. Based on an avian study of the Empire Tract, existing waterfowl, wading, and shore bird habitat appears to be largely limited to 27 acres of shallow water, 14 acres of open water, and 11 acres of mud flats. Based on the results of on-site surveys, the Empire Tract appears to provide little habitat for reptiles and amphibians. Mammals noted on the Empire Tract consisted of muskrats and other common species. On-site fish habitat consists of 14 acres of creeks and ditch channels.

Regarding social significance, the current wetlands retain floodwaters from upstream runoff, but generally do not act to protect adjacent upland areas against occasional tidal flooding from the Hackensack River. Tidal flooding in low-lying areas is a regional problem under existing conditions. The Empire Tract is privately owned land and there is no public recreation on the site.

2.1.4 Environmental Consequences

An assessment of alternatives and their environmental consequences is set forth in Chapters 5 and 7. The on-site development alternatives developed to fulfill NEPA requirements and address USEPA guidelines under CWA Section 404(b)(1) differ primarily in the amount of wetland acreage proposed to be filled and the degree and type of wetland mitigation proposed to compensate for the fill.

Following an assessment of multiple alternatives in Chapter 5, the environmental consequences of four alternatives receive detailed consideration in Chapter 7. These are the No-Action Alternative and three development alternatives each requiring 134 acres of wetland fill (Empire

Tract Alternatives D and E, and revised Empire Tract Alternative E). USACE elected to analyze only the 134-acre alternatives in Chapter 7 in part because alternatives involving larger amounts of fill were indicated as environmentally unacceptable under the guidelines, by USEPA.

As discussed in detail in Chapter 7, Empire Tract Alternatives D and E would result in short-term adverse impacts during construction of the project, and long-term adverse impacts as a result of projected changes in land cover, land use, and habitat. Chapter 7 addresses the environmental consequences to each category of the affected environment identified in Chapter 6, both from a regional impact perspective (which considers the entire HMD) and from a more site-specific standpoint (i.e., the Empire Tract).

As set forth in Chapter 7, the alternatives would have the following impacts:

- **Wetlands:** In Empire Tract Alternative E, the applicant has proposed a larger proportion of tidal brackish restoration and additional freshwater wetlands enhancement than was proposed before. Based on USACE and agency comments, the applicant subsequently proposed a revised mitigation plan for Empire Tract Alternative E that is evaluated within this FEIS. This revised mitigation plan would result in improved sustainability and quality of wetland functions relative to the previously proposed plan, and is still being reviewed by the Meadowlands Interagency Mitigation Advisory Committee (MIMAC).

While the *acreage* of this revised mitigation plan is considered by USACE to be sufficient in offsetting *direct* impacts from placement of fill on 134 acres, USACE still has concerns regarding the design of the plan, and that the plan does not sufficiently offset overall project impacts from habitat fragmentation or use of remaining freshwater wetlands for storm water storage (see Section 8.3).

- **Water Quality:** Water quality of the lower Hackensack River is primarily determined by pollutant loadings from Newark Bay. Development of the Empire Tract would result in some increase in storm water flow to the Hackensack River, but on-site detention basins would treat runoff. Significant adverse impacts to water quality of the Hackensack River would not be anticipated (see Section 7.3).
- **Fish and Benthos:** Since the creeks of the Empire Tract are restricted by tide gates, species found there consist mostly of freshwater species. Limited benthic macroinvertebrate diversity is present under existing conditions. While implementation of either development alternative would generally result in habitat acreage loss to wildlife, there would be an increase and/or improvement in habitat for fish and benthos as a result of reintroduction of tidal flows and increase in open water areas, as contemplated in the wetland mitigation area.

- **Wildlife:** The revised wetland mitigation plan for Empire Tract Alternative E represents an approach that is more consistent with objectives of wildlife management within the HMD, and would result in fewer adverse impacts to wildlife than that proposed under Empire Tract Alternative D, or the original mitigation plan for Empire Tract Alternative E. Implementation of a development plan would result in fragmentation of remaining bird habitat in the region. Fragmentation effects from Empire Tract Alternative E would be less than those under Empire Tract Alternative D because Empire Tract Alternative E does not include Route 120B as a source of fragmentation.
- **Threatened and Endangered Species:** No federally listed endangered or threatened species have been recorded on the Empire Tract. Eleven state-listed threatened or endangered species have been observed on the Empire Tract. None of these are presently known to breed or nest on the site. While the mitigation plans would result in improved habitat for several species groups of management concern, the extent to which fragmentation of habitat would occur, for sensitive species or species with large area requirements, remains a concern.
- **Flooding:** Hydraulic analyses indicate that the implementation of Empire Tract Alternatives D or E would not increase the frequency, duration, or elevation of fluvial floods (i.e., precipitation and storm water runoff). Regional tidal flooding from the Hackensack River is projected to remain the same with the project as under present conditions (see Section 7.13).
- **Cultural Resources:** The implementation of Empire Tract Alternatives D or E, or revised Empire Tract Alternative E, would not affect any identified cultural resources or historic properties and is anticipated to be in compliance with the National Historic Preservation Act. This FEIS is being provided to the NJ State Historic Preservation Office (SHPO). The SHPO has previously concluded that the Meadowlands Mills and the Empire Tract Alternative D projects would have “no effect” on cultural resources and historic properties. Comments from SHPO are being requested for Empire Tract Alternative E (see Section 7.11).
- **Traffic and Transportation:** Elements of the traffic plan for Empire Tract Alternative D are found to be inconsistent with NJMC’s regional transportation plan. Regarding Empire Tract Alternative E, the project proposed would cause significant adverse impacts within the area studied as a result of Phase 1 development by 2003 and for the project’s build-out development by 2009. However, traffic impacts associated with the Empire Tract development could be mitigated based upon the implementation of the roadway improvements and traffic control measures outlined in NJMC’s Route 120 Master Plan Roadway System (MPRS). USACE has not received assurances from state and local

authorities that construction of roadway improvements to address traffic volume increases generated by development on the Empire Tract, will actually occur.

- **Air Quality:** Clean Air Act (CAA) Conformity analyses and a microscale CO analysis were conducted for the Build Alternatives. Predicted VOC and CO emissions associated with wetland fill activities would be below federal conformity de minimis criteria, while predicted emissions of NO_x would exceed the de minimis criterion of 25 tons per year by 48.9 tons per year for the first two construction years. The applicant proposes to offset the NO_x emissions through the purchase of Discrete Emission Reductions (DERs); the amount of DERs required would be determined by NJDEP. Alternative emission reduction credits would be required if DERs could not be used. The applicant has proposed that in such a situation emission reduction credits would be purchased under the New Source Review program.

Microscale hot-spot CO analyses conducted for Alternatives D and E indicate that emissions from project related traffic would not exceed the conformity requirements established to implement the Clean Air Act. Stationary sources, boilers for heating and hot water supply in buildings, would be required to be in compliance with applicable air permit regulations to ensure that no significant adverse impact would occur.

Subject to implementation of the proposed offsets and mitigation, no significant air quality impacts are anticipated to result from the construction and operation of Alternative D or E. Based on the analysis in this FEIS, and subject to the implementation of the required offsets and mitigation, USACE has made a draft determination that wetland fill activities for the construction of Empire Tract Alternatives D or E would be in compliance with the General Conformity Rules under the CAA. (See Section 7.16).

- **Noise:** With respect to stationary sources, there would be some exterior mechanical equipment noise associated with Empire Tract Alternatives D and E and the revised Empire Tract Alternative E. However, these sources would be minor compared to mobile sources on roadways and they would be required to comply with New Jersey Meadowlands Commission (NJMC) and State noise regulations. Therefore, potential noise impacts on the local community associated with stationary sources from the project are not expected to be significant. With respect to mobile sources, the results of noise modeling indicate that the difference between predicted maximum noise levels associated with the Build Alternatives and present conditions would not be significant. Therefore, no significant noise impacts are anticipated (See Section 7.22).
- **Infrastructure:** United Water of New Jersey has sufficient potable water and capacity in the existing water mains to supply the needs of projects set forth in the Empire Tract Alternatives D and E and the revised Empire Tract Alternative E. The average wastewater

flow to the Bergen County Utilities Authority (BCUA) facility from the development would increase by 0.67 million gallons per day (mgd) to 85.0 mgd, which is within the plant's physical capacity of approximately 109 mgd. Public Service Electric and Gas (PSE&G) has stated that there is sufficient existing energy supply and infrastructure to accommodate the needs of the project (see Section 7.23).

- **Socioeconomics:** The Empire Tract Alternatives D and E, and the revised Empire Tract Alternative E would provide expanded employment both during construction and operation of the project components. The applicant estimates that up to 6,021 temporary construction jobs and up to 11,514 permanent jobs would be created. This would result in increased taxes, including but not limited to, sales and additional income taxes to municipal, county, state, and federal governments (see Section 7.19). The new economic activity generated would benefit local, county, and state tax bases, direct and indirect employment and economic development. In contrast, relocation of activity within the same jurisdiction would not generate equivalent benefits.
- **Indirect and Cumulative Impacts:** Analysis indicates that the potential for indirect and cumulative impacts is largely associated with traffic and natural resources. Traffic impacts are expected on the roadway network and intersections in the immediate vicinity of the site. As described in Section 7.15, traffic issues can be mitigated to lessen the effect on traffic conditions on the regional roadway network. No other proposed large-scale projects in the immediate vicinity are known at this time that could create significant cumulative impacts in conjunction with development of the Empire Tract.

Adverse indirect and cumulative impacts on natural resources would result from the direct loss of wetland acreage from the proposed fill activities and fragmentation of remaining expanses of freshwater and brackish marsh within the HMD. The site is located on the western edge of a large block of wetlands that would be reduced as a result of the proposed development, potentially affecting bird species that are regionally rare and/or have specific habitat requirements. Positive indirect and regional cumulative impacts are anticipated to affect populations of waterfowl, migratory shorebirds, wading birds, and possibly other species as a consequence of mitigation activities associated with the project through the reintroduction of daily tidal flow to brackish wetlands. These impacts could add to the benefits of other ongoing or planned environmental remediation and wetland enhancement projects in the area (see Section 7.24).

Chapter 7 also discusses potential development impacts on other environmental resources. They are summarized as follows:

- The development as described in the alternatives considered in detail would result in the loss of up to 134 acres of wetlands in the HMD.

- The Empire Tract does not contain any federally designated critical habitats or marine sanctuaries.
- The Empire Tract is undeveloped and does not contain any identified hazardous waste sites.
- The development would not have adverse impacts on navigation in the Hackensack River.
- The development would conform to NJMC zoning and land use designations for the Empire Tract, if a requested variance were granted by NJMC.
- The project would not obstruct current vistas.
- The wetland mitigation area, including a 2-mile segment of the NJMC's Meadows Path, would provide open space and recreation for the public.

2.2 RELATIONSHIP TO ENVIRONMENTAL PROTECTION STATUTES AND OTHER ENVIRONMENTAL REQUIREMENTS

Existing federal, state, regional, and local laws, policies and programs that impose requirements with which the proposed project must demonstrate compliance include:

- National Environmental Policy Act (NEPA);
- Resource Conservation and Recovery Act (RCRA);
- Comprehensive Environmental Response Compensation and Liability Act (CERCLA);
- Superfund Amendments and Reauthorization Act (SARA);
- Clean Water Act (CWA);
- Clean Air Act (CAA);
- Endangered Species Act (ESA);
- Magnuson-Stevens Fishery Conservation and Management Act;
- National Historic Preservation Act;
- Coastal Zone Management Act;
- Soil Erosion and Sediment Control Act;
- New Jersey Department of Environmental Protection (NJDEP) statutes and regulations;
- New Jersey Meadowlands Commission (NJMC) regulations; and
- Local plans and policies.

2.2.1 National Environmental Policy Act

Because USACE has determined that issuance of a Department of the Army permit for the proposal would be a major federal action significantly affecting the quality of the human environment, USACE has undertaken to prepare an EIS in accordance with the Council on Environmental Quality's (CEQ's) regulations implementing NEPA (40 CFR Parts 1500-1508) and USACE's regulations for NEPA implementation (33 CFR Part 230 and Part 325, Appendix B). NEPA is found at 42 USC Part 470.

2.2.2 RCRA, CERCLA, and SARA

The Resource Conservation and Recovery Act (RCRA) (42 USC Part 6901 et seq.) was passed in 1976 and continued earlier provisions relating to solid waste and resource recovery, including hazardous waste. It sets standards for hazardous waste treatment, storage, and disposal facilities.

In 1980, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 USC Part 9601 et seq.; 26 USC Parts 4611, 4612, 4661, 4662, 4671, 4672) was passed to provide a framework for cleanup of sites with uncontrolled releases of hazardous

substances (including a "Superfund" to pay for some cleanup, which has become the shorthand name for this Act). This program was continued in the Superfund Amendments and Reauthorization Act (SARA) in 1986 (42 USC Part 11001 et seq.). The major responsibilities for monitoring compliance with RCRA and CERCLA rest with USEPA.

2.2.3 Clean Water Act

The Clean Water Act (33 U.S.C. §§ 1251 et seq.), (CWA), which amends the Federal Water Pollution Act of 1972, and subsequent amendments, were designed to assist in restoring and maintaining the chemical, physical, and biological integrity of the nation's waters. The CWA covers discharge of pollutants into navigable waters, wastewater treatment management, and protection of relevant fish, shellfish, and wildlife. The CWA at Section 402 requires a National Pollutant Discharge Elimination System (NPDES) permit for point-source discharges into navigable waters.

Pursuant to Section 404 of the CWA, a Department of the Army permit is required in order to discharge fill material into jurisdictional waters and wetlands of the United States. The Section 404 permit application for the proposed development of the Empire Tract was submitted to USACE in July 1992 and subsequently modified in 1995. The permit application also seeks authorization to construct in navigable waters pursuant to Section 10 of the Rivers and Harbors Act of 1899.

Section 401 of the CWA requires state issuance of a Water Quality Certificate for development on the Empire Tract when such development might have negative impact on water quality. On October 30, 1996 the applicant submitted a multi-permit application to the NJDEP and Land Use Regulation Program (LURP) requesting issuance of the required Water Quality Certification. The application was resubmitted to NJDEP on October 26, 2001. Issuance of a state water quality certificate is a prerequisite to issuance of a DA permit under Section 404 of the CWA.

2.2.4 Clean Air Act

The Clean Air Act (42 U.S.C. §§ 7401 et seq.) (CAA) and subsequent amendments specify regulations for control of the nation's air quality. Federal and state ambient air standards have been established for each criteria pollutant. CAA Section 309, as amended in 1990, requires federal facility compliance with all applicable substantive and administrative requirements for air pollution control. See Section 7.16 for a Draft Conformity Determination pursuant to this requirement.

2.2.5 Endangered Species Act

The Endangered Species Act of 1973 (16 USC §§ 1531 et seq.) (ESA), with subsequent amendments, provides for the protection of threatened and endangered species of animals and plants, and the habitats in which they are found. As part of the biological surveys conducted for the Empire Tract, the property was searched for federally listed and New Jersey state-listed endangered and threatened animal and plant species. No federally listed species were observed, and the only state-listed endangered or threatened species that were observed on the Empire Tract were birds. Six state-listed endangered species of birds and five state-listed threatened species of birds were observed on the Empire Tract, although not breeding or nesting.

The federal and state resource agencies charged with protection of threatened and endangered species have concluded that the applicant's proposed project would not impact such avian species.

2.2.6 Magnuson-Stevens Fishery Conservation and Management Act

The Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Sustainable Fisheries Act of 1996 (Public Law 104-267), requires all federal agencies to consult with the National Marine Fisheries Service on all actions or proposed actions, that are either permitted, funded, or undertaken by the agency, that may adversely affect Essential Fish Habitat (EFH).

USACE has made a preliminary determination that potential effects of the applicant's proposed project on EFH would not be substantial, based upon consultation with National Marine Fisheries Service. Conservation recommendations are being evaluated by USACE, and the evaluation will be concluded prior to a final decision on the permit application.

2.2.7 National Historic Preservation Act

The National Historic Preservation Act (16 U.S.C. § 470) (1966) provides for the protection, enhancement, and preservation of any property that possesses significant architectural, archaeological, historical, or cultural characteristics. Under the regulatory program implementing the National Historic Preservation Act, a federal agency must determine if the subject property is eligible for listing in the National Register of Historic Places (36 CFR Part 800). A Cultural Resources Investigation was conducted for the Empire Tract and submitted to the New Jersey State Historic Preservation Office (SHPO) for SHPO's review. By letters dated May 25, 1998 and June 26, 2000, SHPO advised USACE that the Meadowlands Mills project would have no effect on resources on, or eligible for, inclusion in the National Register of Historic Places. Comments from SHPO are being requested regarding Empire Tract Alternative

E, as this alternative contains off-site roadway improvements that had not been previously reviewed by SHPO.

2.2.8 Coastal Zone Management Act

The Coastal Zone Management Act of 1972 (16 USC Part 1451 et seq.) provides assistance to states, in cooperation with federal and local agencies, for developing land and water use programs for the coastal zone. This includes the protection of natural resources and management of coastal development. Policy is implemented by the respective state coastal zone management program.

Consistent with New Jersey's Coastal Management Program, the NJMC approved the General Plan application for the project that is the subject of the applicant's permit application to USACE. The NJMC Development Board's decision was formally approved on April 28, 1993.

On October 30, 1996, the applicant submitted a multi-purpose permit application to the NJDEP, which indicates the applicant's opinion that the project is in compliance with the Coastal Zone Management Act. The application was withdrawn, and resubmitted by the applicant on October 26, 2001. The application is under review. NJDEP confirmation of consistency with the Coastal Zone Management Act is a prerequisite to issuance of a DA permit.

2.2.9 New Jersey Department of Agriculture Regulations

The New Jersey Department of Agriculture (NJDA), through the County Soil Conservation District, regulates the development of projects for certification of a soil erosion and sediment control plan. In order to comport with state law, the applicant's project will have to comply with the applicable NJDA regulatory requirements.

2.2.10 New Jersey Department of Environmental Protection Statutes and Regulations

NJDEP statutes and regulations set forth state requirements regarding environmental regulation. Under state environmental law, the applicant's project will be required to comply with the following requirements:

- Flood Hazard Area Control Act Permit
- Waterfront Development Permit (WDP)
- Water Quality Certification (WQC)
- Coastal Zone Management Consistency Determination (CZMCD)
- Tidelands Conveyance
- Pollution Discharge Elimination System Permit
- Water Quality Management Plan Amendment

- Pesticide Application Permit
- Treatment Works Approval
- Well Permit
- Water Diversion/Lowering Permit

A multi-permit application for the WDP, WQC and CZMCD was submitted in October 1996 and was resubmitted on October 26, 2001.

2.2.11 New Jersey Meadowlands Commission Regulations

NJMC (formerly known as the Hackensack Meadowlands Development Commission, or HMDC) is a state-appointed authority governing land use in the HMD. The HMD encompasses approximately 20,000 acres, portions of 14 municipalities, and 2 counties. The Empire Tract is under the zoning jurisdiction of the NJMC.

On October 26, 1988, the NJMC, (then the HMDC), adopted an amendment to re-zone a portion of the Empire Tract to Planned Development Center-1 (PDC-1). This PDC-1 zone, adopted specifically for the Empire Tract as a Specially Planned Area, is part of the Master Plan for the HMD. The Master Plan seeks a balance between needed economic development and wetlands protection. The remainder of the Empire Tract is made up of light industrial zones, which allow application of the zoning regulations governing Planned Unit Developments (PUD). Application of the PUD option and PDC-1 zoning facilitates achievement of NJMC Master Plan goals in the context of unified development.

The NJMC approval process requires three application stages, all of which must be reviewed in depth by the NJMC in accordance with state law. The application stages consist of the following:

- **General Plan:** The General Plan submission provides details on existing Empire Tract conditions and proposed uses, and requires schematic data, including an assessment of the environmental impacts of the proposed project. The General Plan for the project was approved by the NJMC in April 1993.
- **Development Plan:** The Development Plan submission pertains either to a portion of the development (e.g., initial phase), or to the entire project. Specific descriptions of issues such as the height and bulk of buildings; open space location and use; preliminary landscaping plans; provisions for parking, streets, and utilities; and data on community facilities are required, as are detailed site engineering data and an assessment of environmental impacts.

- **Implementation Plan:** This submission is filed for sections or subsections of the Specially Planned Area for which a Development Plan (or Plans) has (have) been approved. Exact building dimensions, locations, and services are recorded. All utilities and construction, both on site and in affected water courses, are shown in detail. All environmental performance standards must be described and a detailed environmental impact assessment is required.

The NJMC has authorized the simultaneous submission of the Development Plan and the Implementation Plan applications for the applicant's proposal. These applications for the applicant's proposal, including a request for a variance in PDC-1 zoning so as to exclude residential and neighborhood commercial use, have been submitted to the NJMC and are presently under review.

2.2.12 Local Plans and Policies

As stated in Section 2.3.3, the NJMC has zoning jurisdiction over the Empire Tract. Therefore, the applicant will be required to obtain NJMC approval, including any necessary variances, prior to conducting any regulated activity. In addition, the applicant must obtain all necessary approvals and agreements from the Borough of Carlstadt and the County of Bergen in order to construct the project.